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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/820,934	03/30/2001	David W. Cannell	05725.0878-00	4153

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EXAMINER

CHANNAVAJJALA, LAKSHMI SARADA

ART UNIT

PAPER NUMBER

1615

DATE MAILED: 06/24/2003

12

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/820,934	CANNELL ET AL.
	Examiner Lakshmi S Channavajala	Art Unit 1615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 24 March 2003.

2a) This action is FINAL.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-186 is/are pending in the application.

4a) Of the above claim(s) 10-12,20-28 and 60-186 is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-9 and 13-198 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>11</u> .	6) <input type="checkbox"/> Other: _____

## **DETAILED ACTION**

Receipt of request for reconsideration and IDS dated 3-24-03 is acknowledged.

Claims 1-186 are pending. Claims 10-12, 20-28 and 60-186 have been withdrawn as non-elected and claims 1-9, 13-19 and 29-59 are considered for examination.

### ***Response to Arguments***

Applicant's arguments filed 3-24-02 have been fully considered but they are not persuasive.

#### Double patenting rejection:

Applicants requested that the non-statutory double patenting rejection made in previous action be held in abeyance until allowable subject matter is indicated in the instant application. Accordingly, the rejection has been maintained.

Claims 1-9, 13-19 and 29-59 are rejected under 35 USC 103(a) as being unpatentable over US 6,235,298 to Naser et al (Naser) and US 5,688,930 to Bertho et al (Bertho):

Applicants argue that Naser does not teach the use of xylose and arabinose, as cited by office action, and instead teaches polymers of monomers of xylose and arabinose as anionic exudates polymers. Further, applicants argue that the combination of Naser and Bertho is improper because the references do not suggest combined teachings because while Naser teach the criticality of a zwitterionic or amphoteric surfactant, Bertho teaches alkyl pentosides make remarkable ionic surface active agents. Applicants' arguments are considered but not found persuasive because even though Naser fails to teach monosaccharide monomers and only teach anionic polysaccharide gums that is a complex of xylose and arabinose, instant 'comprising"

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language allows for the presence of both the anionic exudates gum of Naser as well as the non-ionic alkyl pentosides of Bertho. The combination of references do not require the replacement of polysaccharide gum of Naser with the alkyl pentosides of Bertho and instead teaches addition of alkyl pentosides of Bertho to the composition (containing the amphoteric surfactant) of Bertho. Applicants argue that the amphoteric and non-ionic surfactants are completely different classes and accordingly one of ordinary skill in the art would not be motivated to combine the teachings of references that teach away from each other. However, such arguments are not persuasive because instant composition is not limited to any emulsion as described by Naser. Further, Naser teaches the viscosity of their emulsions is altered by the addition of amphoteric or nonionic gum polymers to anionic surfactants (figures of Naser) but does not have any teaching with respect to the [non-ionic] alkyl pentoside (of Bertho). Furthermore, assuming the non-ionic surfactants the alkyl pentoside of Bertho is not a polysaccharide gum. Furthermore, Bertho teaches that compositions containing alkyl pentosides can further contain anionic, cationic or non-ionic surfactants (col. 8-9). Accordingly, applicants' argument that Naser and Bertho teach away from each other is not persuasive. Therefore, the rejection is deemed to be proper.

The examiner has considered the information disclosure statement filed 3-24-03 and a copy of the same is attached to this office action.

### *Conclusion*

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lakshmi S Channavajjala whose telephone number is 703-308-2438. The examiner can normally be reached on 7.30 AM -4.00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K Page can be reached on 703-308-2927. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-7924 for regular communications and 703-308-7924 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1235.

  
\_\_\_\_\_  
Lakshmi S Channavajjala  
Examiner  
Art Unit 1615  
June 20, 2003